



POLICE DEPARTMENT

March 6, 2019

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In the Matter of the Charges and Specifications : Case No.
- against - : 2017-17535
Detective Courtney Wallace :
Tax Registry No. 898737 :
81st Precinct :

At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB-APU: Jonathan Fogel, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

For the Respondent: James Moschella, Esq.
Karasyk & Moschella, LLP
233 Broadway, Suite 2340
New York, NY 10279

To:

HONORABLE JAMES P. O'NEILL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

CHARGES AND SPECIFICATIONS

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on November 5, 2018 and January 22, 2019. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The CCRB-APU called Nayquan Johnson and Mouna Abuhamda as witnesses, and introduced the hearsay statement of Person A. Respondent called Magdeling Wallace

as a witness, introduced the hearsay statement of Person B, and testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, I find as follows:

Specification 1 (pointed gun at N.J.): Guilty

Specification 2 (struck N.J. with gun): Guilty

Specification 3 (pointed gun at Person A): Not Guilty

Specification 4 (refused shield to N.J.): Not Guilty

Specification 5 (refused ID to Person A): Not Guilty

Recommended penalty: forfeit 30 vacations days and one-year dismissal probation.

ANALYSIS

The charges in this case stem from a traffic dispute at approximately 2125 hours on September 7, 2016 between Respondent and the occupants of another vehicle. Respondent, who was off-duty at the time and not in uniform, was driving his Kia with his wife, Magdelina Wallace, in the front passenger seat. The other vehicle, a Ford Explorer SUV, was driven by Nayquan Johnson, with his girlfriend, Mouna Abuhamda, in the front passenger seat, and a friend, Person A, seated in the rear. Both cars were on 61st Street heading west toward 2nd Avenue in New York County when the encounter began.

Nayquan Johnson, age 29, testified that they were on their way to a restaurant when they were cut off on their right side by Respondent's vehicle on 61st Street, causing Johnson's car to stop short. Further up the block, Johnson, who was angry at Respondent's careless move, cut off Respondent's Kia; specifically, Johnson, whose vehicle was now to the right of Respondent's, pulled slightly ahead of Respondent's Kia and maneuvered his Ford Explorer to the left, cutting Respondent off at an angle. Johnson denied that he threw an object at Respondent's Kia as he

was driving past. Both vehicles had their windows down, and Johnson, in a raised voice, asked Respondent why he had cut him off. A verbal dispute ensued, before Johnson continued driving west on 61st Street. (Tr. 31-34, 55-56, 59, 62-64, 67)

According to Johnson, he noticed Respondent's vehicle following him. This observation concerned Johnson, since Respondent's vehicle previously had been signaling to turn left onto 2nd Avenue, but now was following his Ford Explorer toward 3rd Avenue instead. Johnson pulled over to the right to allow Respondent's vehicle to pass, but Respondent pulled up behind him. Respondent exited his Kia, so Johnson stepped out of his vehicle as well to ask Respondent why he was following him and see if everything was okay. The two men walked toward each other and met between their vehicles. Johnson, who was approximately 6'4", 250-260 lbs. at the time of the incident, testified that without warning, Respondent used his hand to karate-chop Johnson in the center of his throat, then struck Johnson on the right rear portion of his neck with a metal object that Johnson believed to be a handgun. Johnson stumbled backward, and saw Respondent with his arm extended pointing a firearm at him. Respondent told Johnson and his companions to get in their car and go, and Respondent got back inside his Kia. (Tr. 34-42, 66, 70, 79 80, 84-85, 102)

Johnson testified that he chose not to leave, preferring to wait for the police to arrive, so Respondent re-emerged from his vehicle still pointing his gun. Abuhamda was on the sidewalk with Person A calling 911. Respondent's wife also was calling 911. Respondent did not show any identification or specifically identify himself as a police officer, but did state that he was "law enforcement" and threatened to shoot Johnson. Abuhamda moved between the two men and pleaded with Respondent not to shoot her boyfriend. Johnson did not recall seeing the gun pointed at Person A. Johnson claimed he asked Respondent for his name and shield number, but Respondent did not supply the information. Respondent went back into his vehicle, and Johnson

and Person A positioned themselves near the front of the Kia to try to prevent him from driving off before the police arrived. Respondent was able to drive off, and Person A jumped into the Ford Explorer and pursued the Kia down 61st Street. Johnson heard sirens and ran toward the vicinity of 3rd Avenue and 62nd Street, where Respondent's vehicle was stopped and the police arrived. (Tr. 42-47, 50-51, 72, 87-88, 91-97)

All of the parties went to the police station [REDACTED]

Johnson testified that he experienced pain on the right side of his neck where he was struck with the gun. [REDACTED]

Johnson acknowledged that he has a civil lawsuit pending against Respondent and New York City in connection with this incident, his first such lawsuit. He also admitted having a prior misdemeanor conviction for criminal possession of a forged instrument in 2013, and felony convictions for grand larceny and attempted fraud in 2009. (Tr. 27-28, 52, 75-78)

Mouna Abuhamda testified that on their way to the restaurant, their Ford Explorer was cut off by the Kia, causing them to come to a sudden halt. Abuhamda testified that she was on her phone and did not notice from which side they were cut off; however, in her statement to CCRB two weeks after the incident, she stated that the Explorer was cut off from their left side. Further up the block, at the intersection, words were exchanged between the drivers; Abuhamda

stated that her boyfriend Johnson did not cut off Respondent's vehicle, which looked like it was going to turn, and did not curse at Respondent. (Tr. 107, 121-23, 130-32)

According to Abuhamda, Johnson continued driving down the street until he noticed that they were being followed by the Kia. Johnson pulled over and Respondent stopped his vehicle behind them. Respondent exited his Kia, Johnson stepped out of his car to see what was going on, and Person A exited as well. Abuhamda testified that she initially remained in the car, and did not see or hear what was taking place between Respondent and Johnson. (Tr. 108-10, 133-35)

When she did exit the Explorer, Abuhamda observed Respondent strike Johnson one time on the left side of his neck under the jawline, causing Johnson to stumble backward; she did not recall whether Respondent had struck Johnson with a gun or just his hand. Abuhamda testified that when she first observed the gun in Respondent's hand it was pointing downward, though at some point Respondent raised the gun and threatened to shoot Johnson. At no point did Johnson raise his fist or initiate physical contact with Respondent. Abuhamda positioned herself between Respondent and Johnson and frantically begged Respondent to go back to his car. She even asked Respondent's wife to help pull Respondent away, but the wife mostly remained inside the Kia where she was speaking on her phone. Person A called the police. (Tr. 112-16, 119, 136-46, 149-51)

Abuhamda testified that after about 10 minutes, Respondent returned to his vehicle and tried to leave, but Person A stood in front of the Kia and told Respondent he'd have to wait until the police arrived. Respondent did not re-emerge from his vehicle; instead, he drove off, running over Person A's foot in the process. Person A got into the Explorer and pursued the Kia, while

Johnson ran after them on foot. Abuhamda heard sirens, flagged down the police on 3rd Avenue, and explained to them the situation. According to Abuhamda, Respondent never identified

himself as a police officer, though she did not hear anyone ask for his identification. (Tr. 116-18, 142-48, 150-51)

Person A did not appear to testify. A recording of CCRB's interview with Person A on October 11, 2016, along with the accompanying transcript, were admitted into evidence (CCRB Exs. 1 and 1A). In that interview, Person A stated that after the two vehicles took turns cutting each other off, Johnson continued driving on 61st Street. Rather than turn left, Respondent followed behind them. Person A told Johnson to pull over, and Respondent pulled over behind them. Johnson exited the Ford Explorer. Person A claimed that from inside the vehicle, he saw Respondent pull out a pistol and state to Johnson, "I should shoot your bitch ass." Person A emerged from the car, and saw Respondent strike Johnson with the pistol. Person A initially thought that Johnson was struck in the face, but Johnson informed him that he had been hit in the neck. Abuhamda tried to intervene, and Respondent pushed her away. Person A asked Respondent to show his credentials, but Respondent refused. Person A told Johnson to chill, called 911 from his cell phone, and stood in front of Respondent's vehicle to prevent him from driving off. Respondent was able to drive away, running over the tip of Person A's foot in the process, and Person A ran to the Ford Explorer and pursued him. Respondent stopped about a block away, Johnson ran over and stood in front of the Kia, and they waited for the police to arrive. (CCRB Ex. 1A at 3-7, 15-18, 21, 25, 28, 30, 33-34, 48)

A recording of Person A's 911 call was admitted into evidence (CCRB Ex.2). On that call, Person A tells the operator, "An officer pulled out a firearm and pistol-whipped my friend." Person A then yells at Respondent, "You ain't going nowhere," and tells the operator that Respondent is trying to leave. Person A can be heard telling Johnson to chill. The operator asks about Respondent's name, badge number, and precinct, and Person A responds that Respondent does not want to give up that information. Person A states that Respondent is trying to hit him

with his car, then disregards the operator's advice not to follow Respondent, and pursues him until the police arrive.

Person B, a porter on 61st Street who witnessed the latter part of the incident, was interviewed at the 19th Precinct by a Duty Captain the morning after the incident. Person B did not appear to testify, so a copy of his recorded statement was introduced into evidence (Resp. Ex. A). In that interview, Person B stated that he heard yelling up the block involving some men and women, so he walked closer for a better look. He heard one of the individuals, presumably Johnson, saying, "You're not going anywhere. You tried to pistol-whip me. You pulled out a gun. And you're just gonna leave? We got your license plate." Person B stated that it got jumbled after that, because everyone started yelling.

According to Person B, a woman (Abuhamda), positioned herself between the men, in order to keep some distance between them, and to get Johnson to stop yelling and being so aggressive. The guy from the white car (Respondent) was in and out of his vehicle. The two men from the black car were in front of Respondent's vehicle, trying to prevent him from driving away.

Respondent reversed his car to create some space, and "peeled off" on 61st Street; Johnson slapped the vehicle's mirrors as the car sped away. Person B stated that he did not see a gun during the incident, and did not see any physical contact between the men.

Magdeling Wallace, Respondent's wife, and an SPAA with the Department, testified that Respondent picked her up after work at approximately 2100 hours. There was heavy traffic on 61st Street as they made their way toward the 59th Street Bridge. Ms. Wallace was startled when she suddenly heard a loud "bam" on the passenger's side of their Kia. She believed that something had struck their car, but did not see it happen. Ms. Wallace denied that they had previously cut off Johnson's vehicle. (Tr. 173-74, 208-10)

Instead of turning left on 2nd Avenue as originally intended, Respondent drove straight on 61st Street because he wanted to pull over to check the outside of the Kia for damage. After they stopped their car, Ms. Wallace observed a male (Johnson) emerge from a vehicle in front of theirs, slam the car door, and walk quickly toward their Kia screaming. According to Ms. Wallace, Respondent told her to call 911, before he exited their vehicle. She powered on her phone, called 911, and then exited their car to ask a doorman for their location. Ms. Wallace, who was petrified, saw a second male (Person A) exit the other vehicle, as well as a female (Abuhamda). (Tr. 175-82, 211, 220)

Ms. Wallace testified that Respondent identified himself to Johnson as a police officer, to which a visibly angry Johnson replied, "Fuck the police. You're going to shoot me? Go ahead and shoot me." The two men got close to each other, but at no point did Ms. Wallace observe any physical contact between them. She did, however, see that Respondent had his firearm out, which he held by his side. Abuhamda positioned herself between the two men and tried to get Johnson to return to his vehicle, but Johnson threw her to the sidewalk. Respondent calmly instructed Johnson to go back to his car as well, again to no avail. Person A, who had his phone out as if he were recording the incident, told Respondent that he was not going to get away with this. Person A briefly blocked Ms. Wallace from re-entering the Kia, but she was able to get back in the car and they drove away. Ms. Wallace did not hear anyone at the scene ask for Respondent's name or shield number. (Tr. 184-96, 202, 215, 222, 226)

A recording of Ms. Wallace's 911 call was admitted into evidence (CCRB Ex. 3). On that call, Ms. Wallace tells the operator that her husband is a police officer, and a man is coming up to him. She states that her husband is arguing with the man, and the man won't let them move away from the car. Ms. Wallace can be heard telling someone, presumably Respondent, please don't move the car, because the police are coming. She then tells the operator that

Respondent moved the car, "but the man comes right in front of us like for my husband to hit him."

Respondent testified that he heard something strike the front passenger window of his vehicle and heard his wife scream. He looked and saw a large bottle in a paper bag collapse against the window, and also noticed an SUV to his right. Respondent denied that he had just cut off the SUV. Respondent claimed that there was too much traffic for him to turn left onto 2nd Avenue and head to the bridge; instead, he continued on 61st Street looking for the first safe place to stop, where he could check his car for damage and make sure his wife was okay. He pulled over behind where Johnson had just pulled over as well. Respondent insisted that he did not deliberately stop close to where Johnson had pulled over, though in his interview with the CCRB on March 15, 2017, Respondent stated that the SUV stopped, so he stopped as well. (Tr. 233 39, 244 46, 272, 280-82)

According to Respondent, Johnson exited his vehicle, slammed the door shut, and walked aggressively toward Respondent. Respondent told his wife to call 911, then he made the tactical choice to exit the Kia in order to deal with Johnson. Respondent testified that he walked toward Johnson, repeatedly identified himself as a police officer, and told Johnson to get back in his car; Johnson, who did not appear to be armed, disregarded, saying, "Fuck you, fuck the police." Person A exited the vehicle and Respondent observed a bend in his arm, as if Person A were reaching for a weapon. Respondent, who was about 5'9", 210 lbs. at the time, drew his firearm and again announced that he was a police officer; Respondent could not recall whether he pointed his firearm at anyone, or just had it in an upward position. Nevertheless, Johnson kept coming toward him, and made contact with Respondent's right shoulder; Respondent heard a click in his shoulder and felt excruciating pain. In the process of this contact, Respondent's gun inadvertently struck the right side of Johnson's face; Respondent insisted he did not deliberately

strike Johnson with his firearm, and did not karate-chop Johnson in the throat. (Tr. 240-41, 246-50, 253-55, 285, 290-93, 297-98)

Respondent testified that when he realized that it was only a phone in Person A's hand, he holstered his firearm. Johnson continued to say, "Fuck the police." Abuhamda positioned herself between them and tried to calm Johnson, but he tossed her aside. Respondent did not recall anyone at the scene asking for his name and shield number, and he did not provide that information since he was in the middle of an ongoing hostile situation. Respondent decided it would be safer to leave the location, and so he got back into his car and told his wife to do the same. Person A momentarily prevented Ms. Wallace from doing so, but she was able to get into the Kia. As Respondent drove away, Johnson hit the car with his fist and Person A kicked it. Johnson chased down the Kia on foot and jumped on the hood, before police officers arrived. (Tr. 241-43, 256, 261, 299-300)

Respondent denied that he told the responding members of service that he initially cut off Johnson's vehicle on 61st Street; however, a complaint report prepared after the incident indicates that Respondent stated that he switched lanes too closely to Johnson's vehicle, thereby angering Johnson and causing a road rage dispute. (CCRB Ex. 5) Respondent testified that his shoulder was injured during the confrontation, and he went to the hospital the next day; however, in his interview with the CCRB, Respondent had stated that he first went to the hospital about a week later. [REDACTED]

[REDACTED] (Tr. 263, 269-70, 303-04)

Before considering each of the specifications, and assessing the reasonableness of Respondent's conduct, this tribunal must first make a determination as to what occurred. That task is complicated by the credibility issues with witnesses on both sides. Nayquan Johnson was detailed and essentially consistent in his testimony, but he has a pending lawsuit that may have

led him to embellish portions of his account, and a criminal record that impacts negatively on his credibility. Respondent, meanwhile, was calm and professional in his testimony, but he has a direct interest in the outcome of this trial, and there were inconsistencies in his testimony compared to prior statements he has made. The corroborating witnesses, Mouna Abuhamda for Johnson, and Magdeling Wallace for Respondent, each had biases that could have affected their testimony, and each had gaps in their descriptions of what occurred. The accounts of Person A and Person B were both hearsay; neither was subjected to cross examination through live testimony. Person B was the only completely disinterested witness, but he was too late to see the pivotal portion of the incident.

After observing the live witnesses, listening carefully to the hearsay accounts, and reviewing the 911 calls, medical records, and complaint report, I am not persuaded that any of the witnesses provided a completely accurate account of what transpired. In order to reach a conclusion as to what most likely occurred, it is necessary to combine portions of the various accounts in a logical fashion.

Accordingly, I find that the sequence of events was set in motion when Respondent's Kia cut off Johnson's Ford Explorer SUV on 61st Street; the testimony of Johnson was convincing on this point, and it makes logical sense as a prelude to what followed. As the cars both proceeded west on 61st Street, Johnson retaliated by cutting off the Kia to yell at Respondent, possibly after someone in the Ford Explorer had also thrown a bottle at Respondent's car. Rather than make his intended left turn, Respondent chose to follow the Ford Explorer to confront Johnson about what had occurred. Johnson pulled to the curb between 2nd and 3rd Avenues, and Respondent did the same behind him, setting the stage for their altercation.

Both Johnson and Respondent emerged from their respective vehicles and walked toward each other. Respondent drew his firearm, pointed it at Johnson, and announced himself as a

police officer, with the hope of keeping Johnson, who was approximately 6'4", 250 lbs., at a distance. Johnson continued toward Respondent, who then used his firearm to strike Johnson in the right neck area, causing Johnson to stumble backward; [REDACTED]

[REDACTED]. The two men continued to argue, and Abuhamda got between them. Ms. Wallace and Person A both called 911. Respondent decided it would be safer to move away from the location, but Johnson and Person A blocked his car from leaving. Respondent was able to maneuver the car away from them and proceed on 61st Street, before making a right onto 3rd Avenue with Person A (in the Ford Explorer) and Johnson (on foot) in pursuit. Police officers arrived, and the parties were brought to the stationhouse, where Johnson was charged with assault, a charge that was later dismissed in court.

Specification 1 charges Respondent with pointing his gun at Johnson without police necessity. Upon exiting his vehicle, Respondent immediately invoked his status as a member of service by announcing that he was a police officer, drawing his weapon, and instructing Johnson to return to his car. Counsel for Respondent argues that Respondent's act of drawing his weapon was valid, since an officer is allowed to pull his firearm when he believes his "safety is in jeopardy." Indeed, a note within Section 221-01 of the Patrol Guide, the "Force Guidelines," states, "The decision to display or draw a firearm should be based on an articulable belief that the potential for serious physical injury is present." The guidelines caution that drawing a firearm prematurely or unnecessarily limits an officer's options in controlling a situation, and may also result in an unwarranted or accidental discharge of the firearm.

Here, Respondent testified that he pulled his firearm because he believed he saw Person A act in a way that was consistent with reaching for a weapon. I don't credit that claim, as it was credibly contradicted by other witness accounts, it is not included in the narrative of the complaint report, and Respondent made no mention of it in his Department interview on

September 8, 2016. (Tr. 288) Rather, it is more credible that Respondent drew his firearm and pointed it at Johnson to try to back him off. This tribunal is mindful that Johnson, a bigger man, was walking toward Respondent after their traffic dispute. However, there was no indication that Johnson possessed a weapon, and Johnson, while visibly upset, did not verbally threaten to do harm to Respondent. Indeed, at the point Respondent drew his firearm, there was no indication that Johnson intended to do anything other than scream at Respondent regarding their traffic dispute. The subsequent behavior of Johnson and Person A, including their efforts to prevent Respondent and his wife from leaving the scene, had not yet occurred. As such, under these specific circumstances Respondent did not have a reasonable belief that there was a potential for serious physical injury. The credible evidence has established that Respondent wrongfully withdrew his firearm and pointed it at Johnson, and I find him guilty of Specification 1.

Specification 2 charges Respondent with striking Johnson with a gun without police necessity. Here, the credible evidence has established that Respondent deliberately struck Johnson in the neck with his firearm. Johnson testified credibly on that point, and Person A can be heard on the 911 call, as the incident was unfolding, stating that Respondent had just "pistol-whipped" his friend. In light of this evidence, I reject Respondent's self-serving, implausible

claim that it was Johnson who initiated physical "contact," and that Respondent's firearm only came into contact with Johnson inadvertently. Rather, it was Respondent who initiated the physical contact: he intentionally used his gun to strike Johnson, causing injury to Johnson, and creating an unjustifiable risk of there being an accidental discharge of the firearm that could have led to even more serious consequences. To the extent that Respondent suffered an injury to his shoulder during the confrontation, I agree with counsel for the CCRB that it more likely than not was caused by Respondent's own action of striking Johnson with the firearm, and not from being assaulted by Johnson.

As discussed in Specification 1, above, Respondent did not have a reasonable basis for drawing his firearm. After doing so, he then used that firearm to strike Johnson in the neck, rather than employing more measured options. Based on the totality of circumstances, striking Johnson in the neck with the firearm was unreasonable. Again, this tribunal is mindful of the circumstances faced by Respondent at the time: Johnson, who was physically larger than Respondent, was visibly upset and coming toward him. However, Respondent, himself, made a series of decisions that put him in that situation: he chose not to turn left onto 2nd Avenue, and instead followed Johnson and parked behind him on 61st Street. Respondent then exited his vehicle to confront Johnson. From the credible evidence, there was no suggestion that Johnson possessed a weapon, or was acting in the manner described by Respondent, at the moment Respondent struck him in the neck.

Under these specific circumstances, Respondent's actions were not reasonable. The record has established, by a preponderance of the credible evidence, that Respondent struck Johnson with his gun without police necessity, and I find him guilty of Specification 2.

Specification 3 charges Respondent with pointing his gun at Person A without police necessity. Both Johnson and Abuhamda testified that they did not recall seeing Respondent ever point his firearm at Person A. In his audiotaped statement, Person A, himself, never mentioned that Respondent pointed his firearm in his direction. Respondent was unclear on where he pointed his firearm. As such, the record has failed to establish, by a preponderance of the credible evidence, that Respondent pointed his gun at Person A, and I find him not guilty of Specification 3.

Specification 4 charges Respondent with refusing to provide his shield number to Johnson, while Specification 5 alleges that he refused to provide his name and shield number to Person A. Section 203-09(1) of the Patrol Guide requires members of service to "courteously and

clearly state your rank, name, shield number and command, or otherwise provide them, to anyone who requests you to do so."

Here, it is undisputed that Respondent did not provide his name or shield number to anyone at the scene. However, the accounts of the various witnesses differ regarding whether anyone actually requested Respondent's name and shield during the incident. Johnson testified that he did make such a request, but Abuhamda testified that she never heard anyone at the scene ask Respondent for such information. In his 911 call, Person A tells the operator that Respondent does not want to give up that information. Respondent, meanwhile, did not recall hearing anyone ask for his name or shield number, nor did Ms. Wallace.

Further, Respondent credibly described the situation as an ongoing hostile confrontation that was not conducive to providing his identifying information. Indeed by everyone's account, including the statement of the independent witness, Person B, there was continuous screaming during the incident, to the point where it was difficult for Person B to hear who was saying what. As such, the record is unclear as to whether Respondent ever heard a request to provide his name and shield number. Further, Respondent demonstrated that he was not trying to conceal his presence at the scene, as he instructed his wife to call 911. Under the totality of these circumstances, the credible evidence has failed to establish that Respondent wrongfully withheld his identifying information from Johnson or Person A, and I find him not guilty of Specifications 4 and 5.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on October 15, 1990. Information from his personnel record that was considered

in making this penalty recommendation is contained in an attached confidential memorandum.

In 2010, Respondent forfeited 30 days for misleading the Department regarding an investigation into Person C.

Respondent has been found guilty of wrongfully pointing his firearm at Nayquan Johnson, and striking Johnson with the firearm as well. Counsel for the CCRB asks that Respondent forfeit 30 vacation days, and be placed on one-year dismissal probation. Even taking into account the not guilty findings on three of the specifications, under the particular circumstances of this case that penalty is appropriate.

On the one hand, this tribunal is mindful of Respondent's 28 years of service to the Department, during which he has earned 50 medals in recognition of his performance. This tribunal also is aware that during this incident, Respondent, who was alone with his wife, was in a precarious situation: he had to deal with individuals who were visibly upset as a result of a traffic dispute, including a particularly large man who was walking toward Respondent.

However, this situation was largely one of Respondent's own making, and one that was readily preventable. Despite all of his years of training and experience with the Department, Respondent badly overreacted to a road dispute. Rather than turn left onto 2nd Avenue, which would effectively have ended the dispute, Respondent chose to pursue the Ford Explorer west on 61st Street. He then deliberately pulled over behind the other vehicle, and emerged from his Kia to meet Johnson head-on, setting the stage for the confrontation that followed. Without police necessity, Respondent dangerously removed his firearm and pointed it at Johnson, and then struck Johnson in the side of the neck with the gun. In drawing his firearm and then using it to strike another individual, Respondent created a risk of an accidental discharge. Fortunately, the firearm did not discharge, and Johnson only suffered a minor injury; but Respondent's conduct was egregious nonetheless.

To be sure, parties from both sides of this dispute share some degree of fault for what transpired. But that does not absolve Respondent from the responsibility to have acted in a manner befitting an experienced member of service, and there must be accountability for his actions here. Taking into account the totality of circumstances and issues in this matter, I recommend that Respondent forfeit thirty (30) vacation days, and that Respondent be DISMISSED from the New York City Police Department, but that his dismissal be held in abeyance for a period of one (1) year pursuant to Section 14-115(d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings.

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials

APPROVED

JUN 13 2019


JAMES P. O'NEILL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE COURTNEY WALLACE
TAX REGISTRY NO. 898737
DISCIPLINARY CASE NO. 2017-17535

Respondent was appointed to the Department on October 15, 1990. On his last three annual performance evaluations, Respondent received the following ratings: in 2014, he received an overall rating of 5.0 "Extremely Competent"; in both 2015 and 2016, he received overall ratings of 4.5 "Extremely Competent/Highly Competent." He has been awarded 43 medals for Excellent Police Duty, six medals for Meritorious Police Duty, and one Commendation. [REDACTED]

[REDACTED]

[REDACTED]

Respondent has a prior disciplinary history. In 1998, he was found not guilty at trial for using excessive force against an individual [REDACTED]. In 2010, he forfeited 30 vacation days after pleading guilty to (i) identifying Person C to law enforcement officials using a name which he knew was fraudulently obtained, and (ii) failing to notify the proper authorities after having become aware that said Person C, who was previously deported, had illegally re-entered the United States. In that disciplinary case, Respondent also pleaded guilty to impeding an official Department investigation by wrongfully misidentifying an arrestee to law enforcement officials (Case No. 85200/09).

From May 3, 2010, to November 16, 2011, Respondent was placed on Level 2 Discipline Monitoring as the result of being found guilty of serious misconduct in the above-referenced disciplinary case.

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials